REMARKS

Claims 1-17 and 26 are pending in the instant application and stand rejected. Reconsideration is respectfully requested in light of the amendments and the remarks contained herein.

Claim Rejections 35 U.S.C. § 112

Claims 1-17 and 26 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement and under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1 and 12 are amended to recite "the maximum expected number is equal to the average number of repair order requests per <u>day</u> multiplied by the number of days the service center is open per time period multiplied by four multiplied by a tire tread index" as the Office suggests. In light of the amendments, it is respectfully requested that the § 112 rejections of claims 1-17 and 26 be withdrawn.

Claim Rejections – 35 U.S.C. § 103

Claims 1-5, 7, 12-14 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burris (U.S. Patent Application No. 2003/0208394) in view of Byrd, "Manage Your Inventory in Excel," (<u>www.computorcompanion.com</u>), further in view of VanHoose (U.S. Patent No. 4,773,011). Claims 6, 8-11, and 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Burris, in view of Byrd, further in view of VanHoose, further in view of Examiner's Official Notice. The rejections are respectfully traversed.

With respect to claim 1, it is respectfully submitted that the combination of cited references do not include sufficient evidence for a proper § 103 rejection of claim 1. For

example, claim 1 recites calculating a maximum expected number of tires to be sold for each carline per period, where calculating the number involves multiplying an average number of repair order requests per time period by the number of days the service center is open per time period multiplied by four multiplied by a tire tread index. The Office cites to paragraph [0025] of Burris as teaching the calculating step. Paragraph [0025] of Burris states,

> [0025] Due to the flexibility of the system, and the large amount of information entered into it relating to virtually all business aspects of the manufacturer, a wide range of reports is readily available to a user. FIG. 3 lists, in a hierarchical structure, examples of some of the types of reports that can be generated. Forecasting reports can be tailored to predict future sales, production requirements and necessary inventory. Further, the scope of these predictions can be adjusted to varying levels of detail. This allows for predictions relating to a class or range of products, or if greater detail is desired, only to one specific product, component or raw material. Additionally, this prediction data can be further broken down based on qualifiers. Several examples include qualifiers relating to a unit of time, or a specific customer, part, product line or manufacturing plant. Consequently, very specific and detailed forecasts can be now generated, such as an expected amount of raw material required per customer per plant per month.

This paragraph states that a number of different reports may be generated at a number of different levels of detail. There are no details in this portion of Burris detailing a mechanism for calculating these reports at all, let alone a teaching of the detailed calculating step of claim 1. Burris at most says that a future sales report may be calculated.

Furthermore, the Office admits on pp. 6-7 of the Office Action that Burris fails to disclose that the calculation is for a maximum expected number of tires to be sold for each carline per period. Instead, the Office cites to Byrd and VanHoose as disclosing calculating maximum sales. The relevant portion of Byrd states:

> In order to figure out your lead time sales and a safety quantity,
> you first have to *estimate your maximum and average sales*.
> These figures will let you calculate a sales variation, which is one
> component of your safety quantity formula. This is where the Sales
> Forecast section of the worksheet comes in.

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Enter the Sales Forecast section title in A9, and the Max Sales label in B10, the Average Sales label in B11, and the Sales Variation label in B12. If you want to include the minus and equal signs on the labels as shown in the example, be sure to start the label with an apostrophe (') so Excel knows you are entering text, not a formula.

In the Max Sales data cell (C10), ***enter the maximum number of items you expect to sell in the coming period***. In the Average Sales data cell (C11), enter the average number of items you expect to sell in the coming period. In the Sales Variance data cell, enter the following formula:
=C10-C11

As you can see, the Sales Variance is the difference between your average expected sales and your maximum expected sales.

The relevant portion of Byrd merely discloses entering an estimate of maximum expected sales in an excel worksheet. Byrd never discusses how to estimate the maximum expected sales at all, let alone teaching detailed steps of calculating maximum sales.

Further, the Office cites to portions of VanHoose as teaching the tire tread index used in the calculation of the maximum expected sales as required in claim 1. The cited portions of VanHoose merely discloses checking the tread depth of tires to determine a safe level of operation for a particular tire. Nowhere in VanHoose does it disclose a specific tire tread index as required by claim 1. A mere tread depth checking does not lead to a tire tread index that varies with carline and represents a percentage of cars serviced by the service center which have a tire tread depth less than a tread depth threshold.

Failing to cite to any references, the Office alleges that "[t]he formula for maximum sales is the average number of service requests per day multiplied by the number of days open in a time period which gives you the total number of service requests in that time period. This is then multiplied by four which is the average number of tires sold and most cars have four times thus the maximum tires that can be sold on average is four and a wear factor which is tire tread

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index. ... There is *no other way* to calculate the maximum sales of tires...." Page 8, Office Action. It is respectfully submitted the Office's assertion is wrong. There are many ways to calculate the maximum sales of tires. For example, sales of tires of each month of a first year can be tracked. The maximum sales of tires of a second year can be the maximum monthly sales of tires of the first year times twelve. Claim 1 requires a specific method of calculation the maximum expected number of tires to be sold that the maximum expected number is equal to the average number of repair order requests per day multiplied by the number of days the service center is open per time period multiplied by four multiplied by a tire tread index.

Because the combination of the cited references fails to teach or suggest the detailed steps of calculating a maximum expected number of tires to be sold for each carline per period, *where calculating the number involves multiplying an average number of repair order requests per day by the number of days the service center is open per time period multiplied by four multiplied by a tire tread index*, it is respectfully requested that the § 103 rejection of claim 1 be withdrawn.

The Office further asserts that the type of data regarding the sales of tires are considered non-functional descriptive material and is accorded no patentable weight. pp. 9-10, Office Action. However, the type of data regarding the sales of tires recited in claim 1 clearly are not non-functional because it is used in calculating the maximum expected number of tires to be sold, determining a tire sales goal for each carline, and calculating the projected tire sales. It is respectfully requested that the type of data regarding the sales of tires be given patentable weight as recited in claim 1.

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Similar features are recited in independent claim 12, and similar portions of the references are cited in referencing the similar features. Thus, it is respectfully requested that the § 103 rejection of claim 12 be withdrawn for similar reasoning as offered for claim 1.

Claims 4, 5, and 14 recite specific ranges that the office action ignores as being non-functional descriptive material. It is respectfully submitted that the office cannot properly ignore recited ranges in this manner. In fact, the MPEP contains several sections specifically devoted to the examination of ranges (*e.g.*, 2131.03 and 2144.05). The recited ranges are no different than other ranges recited in other applications. They are functional limitations, and it is respectfully submitted that these ranges must be considered. Because the cited references fail to deal with tires at all, let alone tire tread indexes in the very specific ranges recited, it is respectfully requested that the § 103 rejections of claims 4, 5, and 14 be withdrawn.

It is noted that the assignee has not presented arguments with respect to certain of the dependent claims in the instant application. This is done without prejudice to the assignee's right to present arguments with respect to each of the claims at any point in the future. Further, because each of the dependent claims in the application depends from a base claim that is itself allowable, the dependent claims are allowable for at least the reasons set forth with respect to the independent claims.

CONCLUSION

For the reasons set forth above, the pending claims of the instant application are allowable. The assignee respectfully requests that the examiner pass this case to issuance.

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